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## THE TREATY OF GHENT—A CENTENARY ESTIMATE

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The principal justification in presenting my subject which has been made familiar through the scholarly work of Henry Adams and Rear Admiral Mahan, lies in the fact that the attention of the English speaking world will be fixed upon this event in the coming year, as Great Britain and the United States unite in celebrating a century of peace between these two great nations. It may, therefore, be not inappropriate, at this time to endeavor to arrive at a proper estimate of the treaty which marks the beginning of the hundred years peace. It has been somewhat the fashion to speak disparagingly of the treaty of Ghent, inasmuch as it contained no reference to the principles for which the war was ostensibly fought. Often, it has been referred to as a "treaty of boundaries," or a mere "treaty of peace"—accomplishing nothing more than the cessation of hostilities. In order to determine whether the treaty of Ghent merits any higher estimate than this common one which has been accepted by one writer after another, it may be pertinent to consider first, the opinion of contemporary history, and secondly, the estimate of a century later, based upon the results of the treaty.

The treaty was signed on Christmas eve 1814, and ratified by the Prince Regent in council the 27th of December. The vessel which bore the copies of the treaty to America did not reach New York until February 11. An express rider was immediately despatched to Washington with the American copy of the treaty. He arrived there three days later, February 14. The treaty was at once considered in a cabinet meeting and, on the following day, President Madison communicated it to the senate for advice and approval.

The senate requested the President to transmit all the papers connected with the negotiations which had not previously been communicated. The next day, February 16, the President submitted the papers received since December 1, the date of the last transmission. The senate, thereupon, voted unanimously to ratify the treaty, so that when Baker, the bearer of the British copy of the treaty, arrived at the state

department on the evening of February 17, everything was in readiness for the exchange of ratifications which at once took place between Baker and the Secretary of State. The following day February 18, the treaty was proclaimed and published.

The celerity with which the approval was given to the treaty indicates clearly the attitude of the United States government toward the treaty. The Republicans, undoubtedly, were glad to bring to an end a war which had brought the government into extreme difficulties, political and financial; while the Federalists who had consistently opposed the war, naturally welcomed peace, especially as peace would restore again the commercial prosperity of New England. The Federalist press, it is true, which before had criticised the government for not making peace, now criticised the terms of the treaty. It claimed that nothing had been secured save the cessation of hostilities, but even this, it was generally admitted, was worth rejoicing over. The Republican papers considered the treaty most acceptable, and eulogized the American commissioners. Even the Federalist papers had nothing but commendation for the American representatives. The *Philadelphia Gazette*, before the treaty was signed, paid this high compliment to the American Commissioners:

After a most careful and dispassionate survey of the correspondence which has taken place between the American and British commissioners at Ghent every American with feelings of just pride and exultation must confess that their representatives on this occasion have manifested a power of reasoning, added to forcibleness of demonstration, chastity and comprehensiveness of language, which entitles them to a superior rank as able and intelligent diplomatists. The manner in which they have handled the subjects presented for their consideration, the promptness and facility with which they have met and overcome every impediment in the course of their discussions, are evidence not only of a deep study and research, but of minds intrinsically devoted to the true interests of their country. In all the correspondence that has appeared the American ministers evidently maintain a vast superiority as much in the matter as in the style of the communication.<sup>1</sup>

The favorable reception of the treaty was reflected not only in the action of the government and the language of the press, but in the spontaneous rejoicing of the people in city and town throughout the United States. As soon as the news of peace reached the United States it was quickly communicated to the cities and towns of the country, by means of express riders who were paid large sums for their services. In New York where the news was first received, there was at once a great demon-

<sup>1</sup> *Philadelphia Gazette*, quoted in the *National Intelligencer*, December 18, 1814.

stration. An immense procession paraded the city and brilliant illuminations everywhere appeared. Guns were fired, the public buildings decorated and every possible manifestation of joy was shown. The news of the treaty came eight days after Jackson's brilliant victory at New Orleans, and the two events were celebrated together, a transparency on the city hall suggestive of the two had the American eagle bearing in one talon the thunderbolts of war and in the other the olive branch of peace.<sup>2</sup> The news of peace reached Philadelphia Sunday, February 12, as the people were returning from church. There was general rejoicing, strangers greeting one another with good wishes, mutual congratulations and hand shaking.<sup>3</sup> Here, too, a public celebration, consisting of illuminations and fireworks, signalized the event before the ratification of the treaty had taken place. In Boston, where the news arrived on the 13th, the schools were dismissed, business suspended, a parade immediately formed of the military organizations of the city and a general celebration voted by the legislature.<sup>4</sup> In the smaller places throughout the country similar demonstrations occurred.<sup>5</sup>

At Washington the ratification of the treaty came in time to enable the restoration of peace to be celebrated on Washington's birthday. A large procession, in which all the trades were represented, took place. The proclamation of the ratification of the treaty was read and speeches were delivered. A banquet in the evening closed the day's celebrations.<sup>6</sup> On the 4th of March, the President issued another proclamation appointing the second Thursday in April as a day of national thanksgiving for the establishment of peace.<sup>7</sup>

The treaty was the more acceptable to the public, because by the victory of New Orleans the war closed with great brilliancy to the American forces. This feeling was expressed in a letter to one of the commissioners in which it was stated that it was "pleasant to grant peace to a defeated enemy and especially when that enemy was the proud and powerful Briton."<sup>8</sup>

The American commissioners, themselves, while disappointed in being unable to secure any promise upon the part of the British of a discontin-

<sup>2</sup> *New York Spectator*, February 13, 1815.

<sup>3</sup> Otis Amidon to Russell, February 20, 1815, *Russell's Papers*, no. 1362 and no. 1067.

<sup>4</sup> *Weekly Messenger*, February 17, 1815.

<sup>5</sup> *Weekly Messenger*, February 17, 1815.

<sup>6</sup> *Weekly Messenger*, February 24, 1815.

<sup>7</sup> Richardson's *Messages and Papers of the Presidents*, vol. i, pp. 560-61.

<sup>8</sup> John L. Smith to Jno. Russell, April 2, 1815, *Russell's Papers*, no. 585.

uance of the practice of impressment or of paper blockades; and while they failed to secure in the treaty any renewal of the fishing privileges considered the treaty the best that could be expected under the circumstances, and to be without dishonor to the United States.<sup>9</sup>

Public opinion, in the United States, in general, was most favorable to the treaty.<sup>10</sup> The failure to secure any statement relative to impressment and paper blockades was not regarded important, inasmuch as these practices on the part of the British government had ceased with the overthrow of Napoleon; and it was the general opinion that they would not be practiced again.<sup>11</sup>

The manner in which the treaty was received in England, may also aid in forming an estimate of the treaty.

Although the people of Great Britain, as well as the British government, were glad to conclude peace, they were displeased at the terms. The English press, in general, considered the treaty humiliating to Great Britain. The *London Globe* the next day after the news was received from Ghent said; after enumerating the conditions of the treaty,

In this description of the treaty, we read the humiliation of ministers in every line. It forms indeed a deplorable contrast with the high sounding threats and boasts of that part of the public press devoted to their service. The waiving of some rights, and the mere retention of others, is a miserable finale to a war that we were told must not cease until after the Americans had been "confoundedly well flogged" which, it was boasted, must dismember the Union, overthrow the government and sweep the American navy from the ocean, not leaving a single bit of bunting or a rag, or stitch behind. But after the state to which ministers had brought the country by their extravagance and the war by their incapacity, if they had been able to terminate it upon any terms not absolutely dishonorable and ruinous, if they had effected a lasting peace, although not an advantageous one, and not merely purchased a short and precarious respite, with a certainty of the renewal of war, with increased force and violence at a time when America shall have both internally, and in her relations with the European powers, many advantages which she does not now possess, we would not be disposed to complain.<sup>12</sup>

<sup>9</sup> Gallatin to Monroe, December 25, 1814, *Writings of Gallatin*, vol. i, pp. 645-47; Clay to Monroe, December 25, 1814, *Monroe Mss. Papers*, vol. xiv, no. 1822.

<sup>10</sup> J. Smith to Russell, May 6, 1815, *Russell's Mss. Papers*, no. 2041; Madison to Benj. Austin, March 7, 1815, *Madison's Mss. Papers*, vol. vii, p. 84.

<sup>11</sup> *Writings of Madison*, vol. vii, p. 311, Message of Madison to Congress, February 18, 1815; Monroe to the Military Committee of the Senate, *Writings of Monroe*, vol. v, p. 323.

<sup>12</sup> *London Globe*, December 27, 1814.

This exaggerated language is of course that of a paper bitterly opposed to the English ministry. The *London Times*, also of the opposition press, was opposed to the ratification of the treaty.<sup>13</sup> In its issue of December 27, it announced what it called the "terms of the deadly instrument."<sup>14</sup> In an editorial of December 31, it professed to believe that the ratification of the treaty by Madison depended upon the outcome of the campaign against New Orleans. It denied that any general satisfaction had been produced by the signing of the treaty.<sup>15</sup> To accept peace in the midst of reverses was humiliating to the British people. Peace would have been more palatable had it come earlier when the British arms were successful.<sup>16</sup> The brilliant success won by the small American navy, which had been a subject of derision at the beginning of the war, wounded the pride of the British which centered in the navy, then as now, the first in the world.<sup>17</sup> It was said: That the law of nations had always been the law of the strongest; that England was therefore, de jure the Dictator of the maritime law of the civilized world.<sup>18</sup> After the first victories of the American navy the English papers stated that the United States navy "must be crushed to atoms, that peace must not be entertained until this object should have been achieved."<sup>19</sup> The English press with few exceptions had been bitter in its denunciation of the United States for making war, at a time when England was engaged in, what she regarded, a life and death struggle with Napoleon.<sup>20</sup> The papers had throughout the peace negotiations insisted that peace should not be made until America should have been "beaten into submission."<sup>21</sup> It was said that peace made at New York or Washington and at the "point of the bayonet" was preferable to negotiations at Ghent.<sup>22</sup> After the British victories of August and September it had been declared that the "fancied conquerors of Canada" would be "mighty" glad to come on their knees and cry "paenitet, miserere nostrum."<sup>23</sup> The sepa-

<sup>13</sup> *London Times*, December 30, 1814.

<sup>14</sup> *London Times*, December 27, 1814.

<sup>15</sup> *London Times*, December 30, 1814.

<sup>16</sup> Beasley to Russell, October 20, 1814, *Russell's Papers*, no. 1847.

<sup>17</sup> *National Intelligencer*, April 3, 1813.

<sup>18</sup> *London Evening Star* quoted in *National Intelligencer*, April 3, 1813.

<sup>19</sup> *London Times*, July 2, 1814.

<sup>20</sup> *London Times*, May 17, 1814.

<sup>21</sup> *London Sun*, July 22, 1814.

<sup>22</sup> *London Times*, July 2, 1814, *London Sun*, August 23, 1814.

<sup>23</sup> *London Times*, October 15, 1814.

ration of the New England States from the Union and the alliance of these with Great Britain was declared likely to follow.<sup>24</sup>

The popular British demands had included the recognition by the United States of the maritime claims of Great Britain; the restitution of Louisiana; the rearrangement of the boundary in accordance with the wishes of Canada; the establishment of a permanent Indian territory, and the exclusion of the United States from all participation in the fisheries of British North America.<sup>25</sup> In view of all these demands it was difficult for the English people to become reconciled to a treaty which secured scarcely one of the things expected and which concluded a war which had been far from creditable to British arms. In this war according to English publications, with a navy on the American coast exceeding that of the enemy in the proportion of ten to one, Great Britain had lost two out of every three fights, had lost three times as many men and had had 1700 merchant vessels captured.<sup>26</sup> To make peace with this record, made vastly worse by the closing campaign of the war, was thought to invite the scorn of other nations.<sup>27</sup> The success of the American navy it was believed threatened the maritime ascendancy of Great Britain and the possessions of her transatlantic colonies.<sup>28</sup> Dissatisfaction with the terms of the treaty on the part of the people of Canada, predicted by the English press, proved to be true. The people of British North America had been urgent for a change in the boundary between these provinces and the United States, which should give them absolute control of the navigable rivers and lakes lying between the two, with the adjacent territory, which would prevent invasion from the United States by water.<sup>29</sup> The anti-ministerial paper, the *London Morning Chronicle* and the *London Courier*, were favorable to the treaty and considered the terms as most honorable for the country inasmuch as Great Britain yielded nothing in the treaty with reference to the maritime questions.<sup>30</sup> Partisan feeling, however, so strongly dominated the English papers that their utterances can not be taken as absolute criteria of public sentiment. But that the people, generally, tired of the war, welcomed peace was shown by the demonstrations with which they greeted the first news

<sup>24</sup> *London Star*, September 29, 1814.

<sup>25</sup> *National Intelligencer*, April 28, 1814.

<sup>26</sup> *Edinburgh Review*, November, 1814.

<sup>27</sup> *London Sun*, February 17, 1815.

<sup>28</sup> *London Sun*, February 17, 1815.

<sup>29</sup> *Quebec Mercury*, quoted in *New York Spectator*, June 30, 1814.

<sup>30</sup> *London Morning Chronicle*, December 27, 1814, *London Courier*, December 27, 1814.

of peace.<sup>31</sup> At Birmingham a large crowd witnessed the arrival of the mail which brought the news of the treaty, and immediately took the horses out and drew the coach to the post office amid loud acclamations.<sup>32</sup>

The British commissioners failed to receive the general commendation which was bestowed upon the representatives of the United States. In the discussion of the treaty in the House of Commons, April 11, 1815, in connection with a motion which had been made proposing an address of thanks to the Prince Regent for the treaty of peace, the British commissioners were severely censured, for having acted with "gross mismanagement" in the negotiations. The basis of the criticism was that "in this treaty no subject of dispute between the two countries, that existed before the signature does not still exist and all the pretensions advanced by his majesty's ministers in the course of negotiations were, one by one, abandoned by them."<sup>33</sup> Alexander Baring and others spoke in a similar condemnatory way. Goulburn, one of the British commissioners, spoke in defense of himself and his colleagues. The motion was, however, carried by a vote of 128 to 37. In the House of Lords, two days later, the ministers were again censured, when discussion arose over a motion made by the Duke of Wellington of an address to the Prince Regent requesting him to place before the house copies of the correspondence between his Britannic majesty's plenipotentiaries and those of the United States. Earl Bathurst, secretary of state for foreign affairs, had great difficulty in defending the ministers and in preventing the passage of the motion.<sup>34</sup> Approval of the treaty in England, thus, was much less general than in the United States. This appears to justify the contemporary opinion in the United States that, while the treaty was honorable to both nations, the United States gained the greater advantage from it.

As we view the treaty a century later we find no reasons for reversing the judgment of contemporary history; but with the lapse of time, additional reasons appear for giving to the treaty of Ghent a rank among the important treaties of this nation. The principal reasons for such an estimate of the treaty, aside from the fact that it ended the war, are; by it the United States secured from Great Britain a more complete recognition of her political independence and power; the claims and demands of Great Britain were rejected; the best usages of international law were confirmed and developed; an enduring peace was secured.

That the treaty secured from Great Britain the recognition of the

<sup>31</sup> *Weekly Messenger*, February 17, 1815.

<sup>32</sup> *Adams History of the United States*, vol. ix, p. 55.

<sup>33</sup> *Annual Register*, 1815, p. 114.

<sup>34</sup> *Annual Register*, 1815, p. 16, et seq.



United States as a political equal, is shown not so much in the terms and wording of the treaty itself, as in the negotiations which led to the treaty. The British commissioners at the outset, expected to impose terms; but they were obliged to recede from one position to another, until, at last, they were forced to agree upon a treaty, mutually reciprocal in its terms.

The American commissioners maintained the dignity and sovereign rights of the United States on every point of issue, compelling the recognition of the absolute political equality of the United States.<sup>35</sup>

The treaty is deserving of credit, also, because of the fact that the claims and demands urged by the British commissioners were rejected. These demands included: a recognition of the British claim to the allegiance of all of her native-born subjects; the creation of a separate Indian territory, as a buffer territory between Canada and the United States, which, at first, was made a *sine qua non*; revision of the boundary lines between the United States and the British colonies; the relinquishment on the part of the United States of the right to keep a naval force upon the great lakes; the abrogation of the North East fishing privileges and the adjustment of territory acquired by the war upon the principle of *uti possidetis*.

These demands, if allowed, would have resulted in the loss of a large and valuable territory to the United States, and the establishment of an Indian state which would have been a constant source of friction. The territory demanded in the form of a permanent Indian territory and that for communication between Halifax and Quebec was estimated to amount to 364,000 sq. miles and to be worth \$500,000,000.<sup>36</sup> The American commissioners, themselves, stated their objections to these terms on the ground that these would "inflict a most vital injury to the United States by the dismemberment of their territory, by arresting the natural growth and increase of population and by leaving the northern and western frontier equally exposed to British invasion and to Indian aggressions; "that they were dishonorable to the United States in demanding from them to abandon territory and a portion of their citizens; to admit a foreign interference in their domestic concerns, and to cease to exercise their natural rights on their own shores and in their own waters."<sup>37</sup>

<sup>35</sup> Henceforth the United States is to be accredited all the rights and privileges belonging to any other state in the family of nations.

<sup>36</sup> *Providence Patriot*, November 12, 1814.

<sup>37</sup> American commissioners to British commissioners, August 24, 1814, *A. S. P. Foreign Relations*, vol. iii, p. 711, et seq.

A treaty founded on such terms, it was maintained, could not be permanent. Instead of settling differences it would give rise to new ones, "sow the seeds of permanent hatred and lay the foundation of hostilities for an indefinite period."<sup>38</sup> The American commissioners held that the only terms upon which peace would be permanent would be those reciprocally honorable to both countries. It is to the credit of the commissioners of both nations that such terms were, finally, agreed upon.<sup>39</sup>

From an international law point of view the treaty of Ghent is deserving of recognition. The terms and wording of the treaty are in accord with the best usages of international law and, in one particular, that of arbitration, contributed in no small degree to the development of modern international law practice. Of the provisions of the treaty, which were important in reaffirming the best international practices which prevailed before the Napoleonic struggle, are; the acceptance of the principle of status quo ante bellum, after a war which has not been waged for conquest; the agreement that there should be no destruction of public property which had been taken in the war; that private property should be left in as nearly the same position as possible as before the war; and that all archives, records, deeds and papers, public and private, should be restored and delivered to the proper authorities and to persons to whom they belonged.

The two states mutually agreed to pay the cost of the maintenance of prisoners; and, also, to use their best efforts to secure the abolition of the slave trade. All the usual diplomatic forms, except one, were observed in the treaty. The one exception was the signing first by the English commissioners of both the British and American copies of the treaty, instead of signing first only the copy to be retained by Great Britain and allowing the American commissioners to sign first the copy to be retained by the United States. John Quincy Adams objected to this departure from the regular usage and his protest, apparently, had its effect in the treaty of commerce which was signed in 1815, in which we find the reciprocal order of signing adopted.<sup>40</sup>

<sup>38</sup> American commissioners to British commissioners, August 24, 1814, *A. S. P. Foreign Relations*, vol. iii, p. 711, et seq.

<sup>39</sup> It may be noted that Gallatin favored a stipulation for the mutual disarmament of the Great Lakes, an arrangement which was made between the two countries two years later, when John Quincy Adams was secretary of state.

<sup>40</sup> The later treaty also contained the alternative principle in accordance with which each state appears first in the preamble and ratifying clause of its own copy of the treaty.

The treaty of Ghent is often referred to as a treaty of boundaries, and the provisions which it made for the settlement of boundary controversies constitute a signal feature of the treaty. Four distinct commissions were provided for the determination of boundaries, whose methods of procedure have had an influence upon the development of international arbitration methods. The provision that, in case of the failure of the boundary commissioners to agree, the differences should be submitted to a friendly sovereign or state for arbitration is important as marking the first instance, on the part of the United States, of such mode of reference of international disputes to the arbitration of a third state.

Finally, the treaty effected not merely a cessation of hostilities; but, as the century has shown, it effected an enduring peace between the two English speaking nations. Senator Lodge has shown in his recent book *One hundred Years of Peace* that amicable relations have not at all times existed during this century, but that the differences which have arisen have been settled without war owing to the ever increasing bond of friendship and good-will between the two countries. To have laid the foundation for such an international friendship and to have aided in the settlement of controversies through diplomacy and arbitration is no small achievement for any treaty. In providing a method for the settlement of vexatious boundary disputes, the treaty very largely removed the danger of war over such contests.

The treaty of Ghent, while only a treaty of peace and amity, must be given credit for the treaty of commerce which was negotiated under powers granted to the same commissioners who had signed the political treaty. The commercial treaty renewed the important features of the Jay treaty of 1794 and laid the foundation of that friendly commercial intercourse which has since prevailed between England and America. The liberal provisions of the treaty of commerce included; freedom of trade between the United States and Great Britain's European possessions; the abolition of all discriminating duties upon American goods and American vessels, with the inclusion of the "most favored nation clause;" the admission of American vessels to the trade in the East Indies and provisions for the appointment of consuls. While the duration of this treaty was only four years, the exact terms of the commercial convention were renewed in 1818; and again, in 1827 they were indefinitely extended.<sup>41</sup>

<sup>41</sup> Convention Respecting Fisheries, Boundary and Restoration of Slaves, 1818, art. iv, b; *Treaties and Conventions, 1776-1900* (Malloy), Convention Continuing in Force, art. iii of Treaty of 1818 (*ibid*).

To sum up: the Treaty of Ghent may be deemed worthy of commendation not merely because it ended a needless war; nor because it was made by the most distinguished group of men ever commissioned by the United States to negotiate a treaty, being composed of Adams, Gallatin, Clay, Bayard, and Russell; but also, because it registered an advance in the international prestige of the United States; because it excluded all claims that would have been derogatory to the United States; because in form and spirit it upheld the best usages of international law; and, finally, because it has resulted in an unbroken peace of one hundred years between Great Britain and the United States.